

Message Text

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67

ORIGIN EB-07

INFO OCT-01 ARA-06 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

DOTe-00 INR-07 NSAE-00 CIEP-01 FAA-00 SS-15 NSC-05

L-03 H-02 PA-01 PRS-01 USIA-06 CPR-01 /058 R

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R 271948Z SEP 76

FM SECSTATE WASHDC

TO AMEMBASSY MEXICO

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E.O. 11652: N/A

TAGS: EAIR, MX

SUBJECT: CIVAIR: PAN AM CARGO CAPACITY INCREASE

REF: MEXICO 12172

1. DEPARTMENT AND CAB HAVE REVIEWED TEXT OF GOM NOTE TRANSMITTED REFTEL, AND DISAGREE WITH MEXICAN CONTENTION THAT AIR TRANSPORT AGREEMENT IS LIMITED TO COMBINATION PASSENGER, CARGO AND MAIL SERVICES ONLY. THE LANGUAGE OF ARTICLE 2, ALLOWING CARRIAGE OF PASSENGERS, CARGO AND MAIL IS PROPERLY READ TO ALLOW AIR SERVICES CARRYING ONLY ONE OF THESE 3 CATEGORIES OF TRAFFIC. THIS INTERPRETATION IS SUPPORTED BY THE AGREEMENT'S DEFINITION OF AIR SERVICES AS SERVICES INVOLVING PASSENGERS, CARGO OR MAIL. MOREOVER, THERE ARE NO SPECIFIC PROVISIONS PROHIBITING SUCH CARRIAGE.

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2. IN VIEW OF ABOVE, EMBASSY IS REQUESTED TO RESPOND TO

MEXICAN NOTE BY TRANSMITTING TO SECRETARIAT OF FOREIGN RELATIONS NOTE ALONG FOLLOWING LINES: "...AND HAS THE HONOR TO REFER TO THE NOTE DATED AUGUST 31, 1976 FROM THE SECRETARIAT OF FOREIGN RELATIONS CONCERNING A PROPOSAL BY PAN AMERICAN WORLD AIRWAYS, INC. TO INCREASE ITS AIR FREIGHT CAPACITY TO MEXICO. THE EMBASSY OF THE UNITED STATES OF

AMERICA WISHES TO INFORM THE SECRETARIAT OF FOREIGN RELATIONS THAT THE UNITED STATES GOVERNMENT IS OF THE VIEW THAT ARTICLE 2 OF THE UNITED STATES-MEXICO AIR TRANSPORT SERVICES AGREEMENT OF AUGUST 15, 1960, AS AMENDED, PERMITS THE CONTRACTING PARTIES TO CONDUCT AIR SERVICES BY ENGAGING IN THE INTERNATIONAL AIR TRANSPORT OF PASSENGER, CARGO, AND MAIL WITHOUT RESTRICTION OF FLIGHTS TO COMBINATION SERVICES ONLY. ARTICLE 1F OF THE AGREEMENT FURTHER DEFINES THE TERM "AIR SERVICE" AS USED IN THE AGREEMENT TO MEAN "...ANY SCHEDULED AIR SERVICE PERFORMED BY AIRCRAFT FOR THE PUBLIC TRANSPORT OF PASSENGERS, CARGO OR MAIL." THERE ARE NO PROVISIONS IN THE AGREEMENT PROHIBITING THE EXCLUSIVE CARRIAGE OF ANY ONE CATEGORY OF TRAFFIC. ALTHOUGH AIRLINES DESIGNATED BY THE UNITED STATES FOR SERVICE TO MEXICO HAVE BEEN ENGAGING SOLELY IN THE CARRIAGE OF COMBINATION TRAFFIC IN THE PAST, THIS PRACTICE HAS BEEN THE RESULT OF MARKET DECISIONS BY THE AIRLINES, AND NOT AS A RESULT OF ANY CONSTRAINTS MANDATED BY INTERGOVERNMENTAL AGREEMENTS.

THE UNITED STATES GOVERNMENT HAS CONSISTENTLY MAINTAINED WITH ALL COUNTRIES THE POSITION THAT ALL SCHEDULED AIR SERVICES, WHETHER THEY ARE ALL-CARGO, ALL-PASSENGER, ALL-MAIL OR A COMBINATION OF CARGO, PASSENGER, AND MAIL, ARE AND SHOULD REMAIN WITHIN THE PURVIEW OF BILATERAL AIR TRANSPORT AGREEMENTS. SUPPLEMENTARY AGREEMENTS FOR CARRIAGE OF CARGO WOULD THEREFORE BE REDUNDANT. THIS VIEW IS GENERALLY SHARED BY MOST COUNTRIES AND WAS AFFIRMED BY AN ARBITRAL TRIBUNAL IN 1965 IN CONNECTION WITH A DISPUTE WITH ITALY OVER THE IDENTICAL ISSUE.

THE EMBASSY OF THE UNITED STATES ACCORDINGLY REQUESTS THE APPROPRIATE MEXICAN AUTHORITIES TO RECONSIDER THEIR VIEWS LIMITED OFFICIAL USE

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IN THE LIGHT OF THE ABOVE.

(COMPLIMENTARY CLOSE.)

3. DEPARTMENT, AFTER DISCUSSING ISSUE WITH PAN AM, DOES NOT BELIEVE IT WOULD BE PRODUCTIVE TO PRESS SPECIFIC ITEM OF PAN AM'S APPLICATION WITH MEXICANS, SINCE MEXICAN CONCESSIONS ARE UNLIKELY AT THIS TIME. AN OFFICIAL

AFFIRMATION OF OUR VIEWS IS NECESSARY, HOWEVER, TO
SERVE AS A POINT OF DEPARTURE FOR ANY FUTURE DISCUSSIONS
OF THIS MATTER. KISSINGER

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Message Attributes

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Margaret P. Grafeld
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